

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

KASEL ASSOCIATES INDUSTRIES, INC¹,

Employer,

and

Case 27-RC-8372

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL NO. 7, AFL-CIO,

Petitioner.

DECISION AND DIRECTION OF ELECTION

On February 17, 2005, United Food and Commercial Workers, Local 7 filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent certain employees of Kasel Associates Industries, Inc., located at 3315 Walnut Street in Denver, Colorado. On February 25, 2005, the Petitioner filed an amended petition, the processing of which was initially blocked. Following resumption of the processing of this petition, on June 7, 2005, Daniel L. Robles, a hearing officer of the National Labor Relations Board, conducted a hearing. Although both parties were afforded an opportunity to file briefs in this matter, neither party chose to do so.

Although the parties were unwilling to enter into a Stipulated Election Agreement in this case, the official record of this case reflects that no substantial

¹ The name of the Employer appears as stipulated at hearing.

issues were presented for decision and resolution.² In essence, the parties have entered into a stipulated record from which the following findings are made:

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing on June 7, 2005 are free from prejudicial error and are hereby affirmed.

² At hearing, counsel for the Employer argued that there is a discrepancy between the number of employees the Petitioner believes to be in the stipulated appropriate unit (as set forth on the petition) and the number of such employees the Employer believes to be in the stipulated appropriate unit. It was this apparent, nonspecific discrepancy that prevented the Employer from entering into an election agreement to conduct a secret ballot election in this matter. Counsel for the Employer, while acknowledging that the Petitioner's showing of interest used to support the petition filed in this matter is not subject to litigation through a representation hearing, requested that the entire record be reviewed to determine that an election was warranted.

Counsel for the Employer's understanding in regard to the showing of interest not being subject to litigation at a representation hearing is correct. As set forth in Section 11021 of the Board's Casehandling Manual for Representation Proceedings, "The determination of the extent of interest is a purely administrative matter, wholly within the discretion of the Agency and is not dispositive of whether a representation question exists... and no party has right to litigate the subject, either directly or collaterally, including during any representation hearing that may be held." For that reason, the Board has long held that the showing of interest is a matter of administrative determination and is not litigable by the parties. See **Perdue Farms, Inc.**, 328 NLRB 909 (1999), citing **Gaylord Bag Co.**, 313 NLRB 306, and **Globe Iron Foundry**, 112 NLRB 1200 (1955).

With respect to the Employer's concern over the alleged discrepancy between the estimation of the number of employees in the petitioned-for bargaining unit provided by the Petitioner and the Employer's contention that the actual number is somewhat higher, the Employer offered no position, argument or evidence to clarify or support its concerns as to voter eligibility issues. Accordingly, any issues as to voter eligibility will be handled through the election process. More specifically, as set forth below, the Employer will be required to provide a list of eligible voters and their addresses that will be used in conducting the election resulting from this Decision and Direction of Election. Specific eligibility issues will be addressed prior to the election and, if necessary, through the challenge procedure used in all Board-conducted elections.

As the parties have been previously informed, the administrative inquiry by this Office, utilizing the list of employees submitted by the Employer for the payroll period ending immediately prior to the filing of the petition in this matter, disclosed that the Petitioner's showing of interest is adequate to support the petition.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board. Specifically, the Employer is a corporation engaged in the commercial manufacture and distribution of pet chew products at its Denver, Colorado plant. During the past 12 months, the Employer purchased and received at its Colorado facility goods valued in excess of \$50,000 directly from suppliers located outside the State of Colorado.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

5. It is appropriate to direct an election in the following unit of employees:

INCLUDED: All employees who cook, process, produce and package Piggy Wiggy Pet Chew Products.

EXCLUDED: All machinists, mechanics, sheet metal workers, office clerical employees, technical employees, professional employees, seasonal employees, confidential employees, guards, supervisors as defined by the Act, and all other employees.³

³ The transcript in this matter inadvertently referred to "Pet Show Products," rather than "Pet Chew Products." The transcript is hereby corrected in this regard. The transcript (and the petition) also refer to "technical professionals" in listing classifications excluded from the appropriate bargaining unit. The term "technical professionals" has no legal significance and is obviously a reference to the parties' desire to exclude "technical employees" and "professional employees" from the appropriate bargaining unit. For that reason, I have corrected the transcript and utilized the proper classifications in the description of the appropriate bargaining unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.⁴ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12

⁴ Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

months before the election date and who have been permanently replaced.

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL No. 7, AFL-CIO**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969); **North Macon Health Care Facility**, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the **full** names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-54533 on or before **Wednesday, June 29, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **July 6, 2005**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 22nd day of June 2005.

B. Allan Benson

B. Allan Benson, Regional Director
National Labor Relations Board, Region 27
600 Seventeenth Street
700 North Tower, Dominion Plaza
Denver, Colorado 80202-5433